

REMARKS:

Claims 1, 6-8, 10-12, 17-19, 21, 26-28, 30, and 31 are currently pending in the application.

Claims 2-5, 9, 13-16, 20, 22-25, 29, 32, and 33 are currently canceled herewith, without *prejudice*.

Claims 1, 6-8, 11-12, 17-19, 21, 26-28, and 30 stand rejected under 35 U.S.C. § 103(a) over U.S. Patent No. 7,003,474 B2 to Lidow ("*Lidow*") in view of "Logility Announces Voyager XPS; Internet-based Application Assists Companies with Collaborative Planning, Forecasting and Replenishment (CPFR) Process" ("*Proquest*") and in further view of U.S. Patent No. 5,983,194 to Hogge, et al. ("*Hogge*").

Claim 10 stands rejected under 35 U.S.C. § 103(a) over U.S. Patent No. 7,003,474 B2 to Lidow ("*Lidow*") in view of U.S. Patent No. 5,983,194 to Hogge, et al. ("*Hogge*") and in further view of "Logility Announces Voyager XPS; Internet-based Application Assists Companies with Collaborative Planning, Forecasting and Replenishment (CPFR) Process" ("*Proquest*").

Claim 31 stands rejected under 35 U.S.C. § 103(a) over U.S. Patent No. 7,003,474 B2 to Lidow ("*Lidow*") in view of "Logility Announces Voyager XPS; Internet-based Application Assists Companies with Collaborative Planning, Forecasting and Replenishment (CPFR) Process" ("*Proquest*"), in view of U.S. Patent No. 6,567,783 to Notani et al. ("*Notani*") and in further view of U.S. Patent No. 5,983,194 to Hogge, et al. ("*Hogge*").

The Applicants respectfully submit that all of the Applicants arguments and amendments are without *prejudice* or *disclaimer*. In addition, the Applicants have merely discussed example distinctions from the cited prior art. Other distinctions may exist, and as such, the Applicants reserve the right to discuss these additional distinctions in a future Response or on Appeal, if appropriate. The Applicants further respectfully submit that by not responding to additional statements made by the Examiner, the Applicants do not

acquiesce to the Examiner's additional statements. The example distinctions discussed by the Applicants are considered sufficient to overcome the Examiner's rejections. In addition, the Applicants reserve the right to pursue broader claims in this Application or through a continuation patent application. No new matter has been added.

REJECTION UNDER 35 U.S.C. § 103(a):

Claims 1, 6-8, 11-12, 17-19, 21, 26-28, and 30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Lidow* in view of *Proquest* and further in view of *Hogge*.

The Applicants respectfully submit that *Lidow*, *Proquest*, and *Hogge* fail to disclose, teach, or suggest each and every element of Claims 1, 6-8, 11-12, 17-19, 21, 26-28, and 30. Thus, the Applicants respectfully traverse the Examiner's obviousness rejection of Claims 1, 6-8, 11-12, 17-19, 21, 26-28, and 30 under 35 U.S.C. § 103(a) over *Lidow*, *Proquest*, and *Hogge*.

The Proposed *Lidow-Proquest-Hogge* Combination Fails to Disclose, Teach, or Suggest Various Limitations Recited in Applicants Claims

For example, with respect to independent Claim 1, this claim recites:

A system for managing a value chain, comprising:
a ***planning application operable*** to receive planning data from a plurality of entities included in a value chain and to ***automatically generate a plan according to the planning data***, at least two of the entities not directly communicating planning data to one another; and
a ***manager application*** operable to:
receive the plan and ***automatically identify one or more exceptions in the plan***;
communicate planning data relating to the exceptions to one or more of the entities;
receive instructions from one or more of the entities regarding how the exceptions are to be resolved; and
automatically modify the planning data in response to the instructions. (Emphasis Added).

In addition, *Lidow*, *Proquest*, and *Hogge* fail to disclose each and every limitation of Independent Claims 12, 21, and 30.

The Applicants respectfully submit that *Lidow* fails to disclose, teach, or suggest independent Claim 1 limitations regarding **"at least two of the entities not directly communicating planning data to one another"**. In particular, the Examiner equates **at least two of the entities not directly communicating planning data to one another (i.e., planners for generating plans based on demand requirement)**, (27 April 2007 Office Action, Pages 2-3) with the **"[p]lanners are employees of the operator supply chain server 74 who intervene when supply chain server 74 is unable to fulfill all the unconstrained demand with available supply as is described below"** disclosed in *Lidow*. (Col. 8 lines 13-17). However, the **"planners"** disclosed in *Lidow* are merely **"employees of the operator supply chain server 74 who intervene"** (Col. 8 lines 13-17) **but do not include, involve, or even relate to "at least two of the entities not directly communicating planning data to one another"** as recited in independent Claim 1. In contrast, the **"entities"** recited in independent Claim 1 are suppliers, buyers and "any other entities that purchase items from suppliers...or buyers." Thus, among other things, the **"entities"** recited in independent Claim 1 are more than merely "employees of the operator supply chain server." (Col. 8 lines 14-15). Thus, the Applicants respectfully submit that the equations forming the foundation of the Examiner's comparison between *Lidow* and independent Claim 1 cannot be made. The Applicants further respectfully submit that these distinctions alone are sufficient to patentably distinguish independent Claim 1 from *Lidow*.

The Applicants respectfully submit that *Lidow* fails to disclose, teach, or suggest independent Claim 1 limitations regarding **"automatically generat[ing] a plan"**. In particular, the Examiner equates **"automatically generate a plan according to the planning data"** (27 April 2007 Office Action, Page 2) with **"[s]upply Chain Planners then, using extensive information available to them on the Supply chain network 70, decide how best to re-allocate demand products, either by manually over-riding the system, or by entering new parameters into the system"** (col. 14, lines 18-22) disclosed in *Lidow*. However, the "supply Chain Planners" disclosed in *Lidow* are merely **people, who**

manually intervene in the planning process but do not include, involve, or even relate to “automatically generat[ing] a plan” as recited in independent Claim 1. In contrast, “automatically generat[ing] a plan” recited in independent Claim 1 is a function automatically performed by the system. Thus, the Applicants respectfully submit that the equations forming the foundation of the Examiner’s comparison between *Lidow* and independent Claim 1 cannot be made. The Applicants further respectfully submit that these distinctions alone are sufficient to patentably distinguish independent Claim 1 from *Lidow*.

The Office Action Acknowledges that *Lidow* Fails to Disclose Various Limitations Recited in Applicants Claims

The Applicants respectfully submit that the Office Action acknowledges, and the Applicants agree, that *Lidow* fails to disclose the emphasized limitations noted above in independent Claim 1. Specifically, the Examiner acknowledges that *Lidow* fails to disclose ***“a planning application operable to receive planning data from plurality of entities [sic] included in a value chain”***. (27 April 2007 Office Action, Page 3). However, the Examiner asserts that the cited portions of *Proquest* disclose the acknowledged shortcomings in *Lidow*. The Applicants respectfully traverse the Examiner’s assertions regarding the subject matter disclosed in *Proquest*.

The Applicants further respectfully submit that *Proquest* fails to disclose, teach, or suggest independent Claim 1 limitations regarding a ***“planning application operable to receive planning data from a plurality of entities included in a value chain”***. In particular, it appears that the Examiner is equating the “planning application operable to receive planning data from a plurality of entities included in a value chain” recited in independent Claim 1 with a general statement that a planning application exists as disclosed in *Proquest*. (See pages 1-3). However, as acknowledged by the Examiner, *Lidow* fails to teach “a planning application”. Therefore, because *Lidow* fails to teach a planning application, as acknowledged by the Examiner, *Lidow* also fails to teach a planning application operable to receive planning data from a plurality of entities included in a value chain and to automatically generate a plan according to the planning

data, at least two of the entities not directly communicating planning data to one another.

Accordingly, the mere general disclosure in *Proquest* of the existence of a planning application, which does not teach these limitations, fails to teach every limitation of independent claim 1. Thus, the Applicants respectfully submit that the equations forming the foundation of the Examiner's comparison between *Proquest* and independent Claim 1 cannot be made. The Applicants further respectfully submit that these distinctions alone are sufficient to patentably distinguish independent Claim 1 from *Proquest*.

The Office Action Fails to Properly Establish a *Prima Facie* case of Obvious over the Proposed *Lidow-Proquest* Combination

The Applicants respectfully submit that the Office Action fails to properly establish a *prima facie* case of obviousness based on the proposed combination of *Lidow* or *Proquest* either individually or in combination. The Office Action has not shown the required teaching, suggestion, or motivation in these references or in knowledge generally available to those of ordinary skill in the art at the time of the invention to combine these references as proposed. The Office Action merely states that "it would have been obvious...to modify the disclosures of *Lidow* to incorporate the disclosures of *Proquest* with the motivation to provide a better experience for customers and optimize enterprise operations". (27 April 2007 Office Action, Page 3). (Emphasis Added). The Applicants respectfully disagree.

The Applicants further respectfully submit that this purported advantage relied on by the Examiner is nowhere disclosed, taught, or suggested in *Lidow* or *Proquest*, either individually or in combination. The Examiner asserts that the motivation to combine the references as proposed would be to provide a better experience for customers and optimize enterprise operations". (27 April 2007 Office Action, Page 3). The Applicants respectfully disagree and further respectfully request clarification as to how the Examiner arrives at this conclusion. ***The Applicants respectfully request the Examiner to point to the portions of Lidow or Proquest which contain the teaching, suggestion, or motivation to combine these references for the Examiner's stated purported***

advantage. The Applicants further respectfully submit that the Examiner is using the subject Application as a template to formulate reconstructive hindsight, which constitutes impermissible use of hindsight under 35 U.S.C. § 103(a).

A recent Federal Circuit case makes it crystal clear that, in an obviousness situation, the **prior art must disclose each and every element of the claimed invention, and that any motivation to combine or modify the prior art must be based upon a suggestion in the prior art.** *In re Lee*, 61 U.S.P.Q.2d 1430 (Fed. Cir. 2002). (Emphasis Added). Conclusory statements regarding common knowledge and common sense are insufficient to support a finding of obviousness. *Id.* at 1434-35. With respect to the subject Application, the **Examiner has not adequately supported the selection and combination of Lidow or Proquest to render obvious the Applicants claimed invention.** The Examiner's unsupported conclusory statements that "it would have been obvious...to modify the disclosures of *Lidow* to incorporate the disclosures of *Proquest* with the motivation to provide a better experience for customers and optimize enterprise operations" and "to provide a better experience for customers and optimize enterprise operations", **does not adequately address the issue of motivation to combine.** (27 April 2007 Office Action, Page 3). This factual question of motivation is material to patentability, and cannot be resolved on subjective belief and unknown authority. *Id.* It is improper, in determining whether a person of ordinary skill would have been led to this combination of references, simply to "[use] that which the inventor taught against its teacher." *W.L. Gore v. Garlock, Inc.*, 721 F.2d 1540 (Fed. Cir. 1983). Thus, **the Office Action fails to provide proper motivation for combining the teachings of Lidow or Proquest**, either individually or in combination.

The Applicants Claims are Patentable over the Proposed Lidow-Proquest-Hogge Combination

Independent Claims 12, 21, and 30 are considered patentably distinguishable over the combination of *Lidow*, *Proquest*, and *Hogge* for at least the reasons discussed above in connection with independent Claim 1.

Furthermore, with respect to dependent Claims 6-8, 11, 17-19, and 26-28: Claims 6-8 and 11 depend from independent Claim 1; dependent Claims 17-19 depend from independent Claim 12; and dependent Claims 26-28 depend from independent Claim 21 are also considered patentably distinguishable over the combination of *Lidow*, *Proquest*, and *Hogge*. Thus, dependent Claims 6-8, 11, 17-19, and 26-28 are considered to be in condition for allowance for at least the reason of depending from an allowable claim.

Thus, for at least the reasons set forth herein, the Applicants respectfully submit that independent Claims 1, 12, 21, and 30 and dependent Claims 6-8, 11, 17-19, and 26-28 are not obvious over *Lidow*, *Proquest*, and *Hogge*. The Applicants further respectfully submit that independent Claims 1, 12, 21, and 30 and dependent Claims 6-8, 11, 17-19, and 26-28 are in condition for allowance. Thus, the Applicants respectfully requests that the rejection of Claims 1, 6-8, 11-12, 17-19, 21, 26-28, and 30 under 35 U.S.C. § 103(a) be reconsidered and that Claims 1, 6-8, 11-12, 17-19, 21, 26-28, and 30 be allowed.

THE LEGAL STANDARD FOR OBVIOUSNESS REJECTIONS UNDER 35 USC § 103:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, ***there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.*** Second, there must be a reasonable expectation of success. Finally, ***the prior art reference*** (or references when combined) ***must teach or suggest all the claim limitations.*** The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, ***and not based on applicant's disclosure.*** *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991); M.P.E.P. § 2142. Moreover, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974). If an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988); M.P.E.P. § 2143.03.

With respect to alleged obviousness, ***there must be something in the prior art as a whole to suggest the desirability***, and thus the obviousness, of making the combination. *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561 (Fed. Cir. 1986). In fact, the absence of a suggestion to combine is dispositive in an obviousness determination. *Gambro Lundia AB v. Baxter Healthcare Corp.*, 110 F.3d 1573 (Fed. Cir. 1997). The mere fact that the prior art can be combined or modified does not make the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1990); M.P.E.P. § 2143.01. The consistent criterion for determining obviousness is whether the prior art would have suggested to one of ordinary skill in the art that the process should be carried out and would have a reasonable likelihood of success, viewed in the light of the prior art. Both the suggestion and the expectation of success must be founded in the prior art, not in the Applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991; *In re O'Farrell*, 853 F.2d 894 (Fed. Cir. 1988); M.P.E.P. § 2142.

A recent Federal Circuit case makes it clear that, in an obviousness situation, the prior art must disclose each and every element of the claimed invention, and that any motivation to combine or modify the prior art must be based upon a suggestion in the prior art. *In re Lee*, 61 U.S.P.Q.2d 1430 (Fed. Cir. 2002). Conclusory statements regarding common knowledge and common sense are insufficient to support a finding of obviousness. *Id.* at 1434-35.

CONCLUSION:

In view of the foregoing amendments and remarks, this application is considered to be in condition for allowance, and early reconsideration and a Notice of Allowance are earnestly solicited.

Although the Applicants believe no fees are deemed to be necessary; the undersigned hereby authorizes the Director to charge any additional fees which may be required, or credit any overpayments, to **Deposit Account No. 500777**. If an extension of time is necessary for allowing this Response to be timely filed, this document is to be construed as also constituting a Petition for Extension of Time Under 37 C.F.R. § 1.136(a) to the extent necessary. Any fee required for such Petition for Extension of Time should be charged to **Deposit Account No. 500777**.

Please link this application to Customer No. 53184 so that its status may be checked via the PAIR System.

Respectfully submitted,

18 July 2007
Date

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